



Commonwealth of Virginia  
Virginia Information Technologies Agency

**INMARSAT BROADBAND GLOBAL AREA NETWORK (BGAN) TERMINALS  
& SERVICES AND BGAN AIRTIME SERVICE**

Date: March 3, 2008

Contract #: VA-070731-MACK

Authorized User: State Agencies, Institutions and Other Public Bodies of the Commonwealth

Contractor: Mackay Communications Inc.

FIN: 56-1550100

Contact Person: Patrick Fisher  
Phone: 919-850-3164  
Email: [Patrick.fisher@mackaycomm.com](mailto:Patrick.fisher@mackaycomm.com)

Ordering Information: 3691 Trust Drive  
Raleigh, NC 27616-2955  
Fax: 919-954-1707

Term: August 2, 2007 – August 1, 2008

Delivery Date: Determined by Individual Orders

Payment: Net 30 days

For Additional Contract Information, Please Contact:

Stuart Thacker  
Strategic Sourcing Consultant  
Phone: 804-416-6163  
E-Mail: [stuart.thacker@vita.virginia.gov](mailto:stuart.thacker@vita.virginia.gov)  
Fax: 804-416-6361

Doug Leslie  
Strategic Sourcing Consultant  
Phone: 804-416-6161  
E-Mail: [doug.leslie@vita.virginia.gov](mailto:doug.leslie@vita.virginia.gov)

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

CONTRACT #VA-070731-MACK  
EXTRACT CHANGE LOG

[illegible]



VIRGINIA INFORMATION TECHNOLOGIES AGENCY  
SUPPLY CHAIN MANAGEMENT  
11757 MEADOWVILLE LANE  
CHESTER, VIRGINIA 23836-6315

**CONTRACT VA-070731-MACK**

**SUPPLIER**

COMPANY NAME:	Mackay Communications	SALES CONTACT:	Shawn Ryan
ADDRESS:	3691 Trust Drive	TITLE:	Account Manager
		PHONE NO:	919-389-7727
CITY/STATE/ZIP:	Raleigh, NC 27616	FAX:	919-954-1707
FEIN:	56-1550100	E-MAIL ADDRESS:	Shawn.Ryan@mackaycomm.com
WEBSITE URL:	mackaysatellite.com		

**VITA TERM CONTRACT for Telecommunications Products & Service**

Products & Service:	Broadband Global Area Network (BGAN) terminals and service
Authorized Contract Users:	VA Agencies, Institutions and other public bodies
Contract Term:	One (1) year, with three optional one (1) year renewals
Pricing:	See Exhibit "A"
Product & Service Requirement:	See Exhibit "B"
Additional Discounts:	None
Installation:	See Exhibit "B"
Orders:	<u>Standard Order Process:</u> As depicted in Item 4 of the Contract Terms & Conditions.

VITA SCM Contacts: **Contract Administration/Compliance**  
*Charles Townes, Contract Manager*  
Voice: (804) 416-6088  
Fax: (804) 416-6353  
E-mail Address: [contracts@vita.virginia.gov](mailto:contracts@vita.virginia.gov)

This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4343.1 or against any Bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

# EXHIBIT A - PRICING

Item No.	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
	The Virginia Information Technologies Agency (VITA) desires to establish a firm fixed price term contract to purchase Inmarsat Broadband Global Area network terminals and service.				
	<b>LOT#1 Telecom Equipment Contract</b>				
	<b>INMARSAT BGAN TERMINALS</b>				
1.	Thrane Explorer 300	1	ea	2,100.00	
	Includes 2 meter Ethernet/ISDN cable; AC/DC power supply; 8 meter USB cable; rechargeable Lithium Ion battery; manual and drivers on CD-ROM				\$ 2,100.00
2.	Thrane Explorer 500	1	ea	2,550.00	
	Includes 2 meter Ethernet/ISDN cable; AC/DC power supply; 8 meter USB cable; rechargeable Lithium Ion battery; manual and drivers on CD-ROM				\$ 2,550.00
3.	Thrane Explorer 700	1	ea	3,875.00	
	Includes Explorer 700 10 meter cable; 2 meter Ethernet/ISDN cable; AC/DC power supply; USB cable; rechargeable Lithium Ion battery; manual and drivers on CD-ROM				\$ 3,875.00
4.	Nera WorldPro 1000	1	ea	2,000.00	
	Includes AC/DC power supply; USB cable; rechargeable Lithium Ion battery; manual and drivers on CD-ROM				\$ 2,000.00
5.	Hughes HNS 9201	1	ea	2,500.00	
	Includes 3 meter Ethernet/ISDN cable(RJ-45 connectors); AC/DC power supply; 3 meter USB cable; rechargeable Lithium Ion battery; travel adapter kit; manual and drivers on CD-ROM				\$ 2,500.00
	<b>Lot#1 Total Evaluated Telecom Equipment Price:</b>			\$ 13,025.00	
	<b>THRANE BGAN ACCESSORIES/SPARE PARTS</b>				
6.	Battery Pack for Explorer 300/500	1	ea	170.00	
7.	Battery Pack for Explorer 700	1	ea	235.00	
8.	Car Charger Cable for Explorer 300/500	1	ea	40.00	
9.	Bluetooth handset Plus Charger 300/500/700	1	ea	400.00	
10.	Pole Mount Kit for Explorer 300/500	1	ea	150.00	
11.	Pole Mount Kit for Explorer 700	1	ea	275.00	
12.	Soft Bag Carry Case for Explorer 300/500	1	ea	100.00	
13.	Soft Bag Carry Case for Explorer 700	1	ea	160.00	
14.	Water Proof Hard Case for Explorer 300/500	1	ea	95.00	
15.	Water Proof Hard Case for Explorer 700	1	ea	120.00	

# EXHIBIT A - PRICING

HUGHES BGAN ACCESSORIES/SPARE PARTS					
Item No.	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
16.	Battery Pack for Hughes HNS9201	1	ea	170.00	
17.	DC Power Adapter for Hughes HNS9201	1	ea	90.00	
18.	Pole Mount Kit for Hughes HNS9201	1	ea	300.00	
19.	Cable 30 Meter AC Main Power Adapter	1	ea	35.00	
20.	Cable 10 Meter Ethernet/ISDN	1	ea	23.00	
21.	Cable 30 Meter Ethernet/ISDN	1	ea	29.00	
22.	Handset, ISDN (Heavy Duty)	1	ea	600.00	
23.	Handset, ISDN (Standard)	1	ea	385.00	
24.	Water Proof Hard Case for Hughes HNS9201	1	ea	120.00	
NERA BGAN ACCESSORIES/SPARE PARTS					
25.	Battery Pack for Nera WorldPro 1000	1	ea	105.00	
26.	DC Car Adapter for Nera WorldPro 1000	1	ea	125.00	
27.	Bluetooth handset for Nera WorldPro 1000	1	ea	425.00	
28.	Handset, ISDN (Heavy Duty)	1	ea	600.00	
29.	Handset, ISDN (Standard)	1	ea	385.00	
30.	Soft Carry Case for Nera WorldPro 1000	1	ea	70.00	
31.	Water Proof hard Case for Nera WorldPro 1000	1	ea	95.00	
Lot#2 Telecom Service Contract					
BGAN AIRTIME SERVICE PLANS					
32.	Activation Fee	1		50.00	
PostPaid Plans					
Light 12 month Contract					
33.	Monthly Fee	1	mo	45.00	
34.	Pre-paid fee	1	ea	540.00	
35.	Voice Included Min/Month	1	mo	0	
36.	Background IP Included MB/Month	1	mo	0	
37.	Additional MB Usage	1	MB	5.85	
Standard 12 month CONTRACT					
38.	Monthly Fee	1	mo	35.00	
39.	Pre-paid fee	1	ea	420.00	
40.	Voice Included Min/Month	1	mo	0	
41.	Background IP Included MB/Month	1	mo	0	
42.	Additional MB Usage	1	MB	6.00	
Rollover 12 month CONTRACT					
43.	Monthly Fee	1	mo	58.00	
44.	Pre-paid fee	1	ea	696.00	
45.	Voice Included Min/Month	1	mo	0	
46.	Background IP Included MB/Month	1	mo	10	
47.	Additional MB Usage	1	MB	5.80	

# EXHIBIT A - PRICING

Item No.	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENDED PRICE
	<b>Entry Bundle</b> <i>3 MONTH CONTRACT</i>				
48.	Monthly Fee	1	mo	115.00	
49.	Pre-paid fee	1	ea	345.00	
50.	Voice Included Min/Month	1	mo	0	
51.	Background IP Included MB/Month	1	mo	20	
52.	Additional MB Usage	1	MB	5.50	
	<b>Mid Bundle</b> <i>6 MONTH CONTRACT</i>				
53.	Monthly Fee	1	mo	402.00	
54.	Pre-paid fee	1	ea	2,412.00	
55.	Voice Included Min/Month	1	mo	30	
56.	Background IP Included MB/Month	1	mo	100	
57.	Additional MB Usage	1	MB	4.65	
	<b>High Bundle</b> <i>12 MONTH CONTRACT</i>				
58.	Monthly Fee	1	mo	2,530.00	
59.	Pre-paid fee	1	ea	30,360.00	
60.	Voice Included Min/Month	1	mo	200	
61.	Background IP Included MB/Month	1	mo	750	
62.	Additional MB Usage	1	MB	3.55	
	<b>Super Bundle</b> <i>12 MONTH CONTRACT</i>				
63.	Monthly Fee	1	mo	5,174.00	
64.	Pre-paid fee	1	ea	62,088.00	
65.	Voice Included Min/Month	1	mo	300	
66.	Background IP Included MB/Month	1	mo	2,000	
67.	Additional MB Usage	1	MB	2.90	
	<b>ADDITIONAL POSTPAID AIRTIME SERVICES</b>				
	<b>VOICE SERVICE</b>				
68.	To any Terrestrial destination	1	Per min	0.90	
69.	From BGAN to a BGAN unit	1	mo	0.80	
70.	From BGAN to cellular	1	mo	1.05	
71.	Text Message (SMS) (rate per message)	1	ms	0.40	
	<b>DATA SERVICE</b>				
72.	Background IP/Standard (Shared bandwidth)(per megabyte)	1	MB	Plan Dependent	
73.	ISDN 64kbps/Speech 3.1 Mhz Audio Streaming (Guaranteed bandwidth)	1	mo	5.35	
74.	32 kbps - VoIP encrypted	1	mo	1.85	
75.	32 kbps	1	mo	2.70	
76.	64 kbps	1	mo	5.35	
77.	128 kbps	1	mo	9.15	
78.	256 kbps	1	mo	15.60	
	<b>Lot#2 Total Evaluated Telecom Service Price</b> Items 32, 33, 34, 38, 39, 43, 44, 48, 49, 53, 54, 58, 59, 63, 64, & 68				<i>\$ 105,270.90</i>

## EXHIBIT B – PRODUCT AND SERVICE REQUIREMENTS

### 1. PRODUCT REQUIREMENTS

#### A. Delivery Procedure

Supplier shall deliver the requested Product ready for use within thirty (30) days after receipt of order from an Authorized User, or such shorter time as may be agreed to between Supplier and such Authorized User. Contractor shall deliver Product on an emergency basis at no additional cost to any Authorized User. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

Supplier shall deliver all Product F.O.B. destination, with such destination being the "ship to" address specified in the applicable order. Supplier shall bear all risk of loss or damage to the Product until Receipt. Additionally, if the Supplier is to provide installation of the Product, Supplier shall bear all risk of loss of or damage to the Product, to the extent that such loss or damage is caused by the Supplier or Supplier's negligence, until Acceptance by the Authorized User/completion of installation. In all cases, Supplier shall arrange and pay for all transportation and insurance sufficient to fully protect the Product while in transit. If any loss to, or damage of, the Product due to any act, omission, or negligence of the Supplier occurs prior to Acceptance by the Authorized User, Supplier shall immediately provide a replacement item.

All Product furnished shall be new and in current production. Clear and unrestricted title to all Product, excluding System Software, purchased under this Contract shall pass to the Authorized User upon payment of the purchase price.

#### B. Failure to Deliver

Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule determined in accordance with this Contract shall constitute a material default on this Contract. If Product is not delivered / installed within the time specified herein, or as otherwise agreed between Authorized User and Supplier in a particular order, the Authorized User may terminate the applicable order for default without further obligation.

In the event Supplier fails for any reason, other than a Force Majeure event or failure of the Authorized User to provide any required access or support, to deliver in a timely manner or according to Contract terms the Product or Services set forth in the Pricing Exhibit, VITA or the ordering Authorized User, at its own discretion, may give Supplier written notice of default. Once notice is provided to Supplier, VITA or the Authorized User may immediately procure the products or services from another source. In no event shall VITA or the Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the Product(s) or Service(s) which are subject of the notice by VITA or the Authorized User of breach. This remedy is in addition to and not in lieu of any other remedy VITA or the Authorized User may have under this Contract or at law or in equity.

#### C. Product Installation

No product installation by the Supplier is necessary for the Products; however, the Supplier will provide a Usage Guide at no cost.

#### D. Site Preparation

Not applicable.

#### E. Product Acceptance

All Product and Services are subject to inspection and testing by the Authorized User, and any that does not meet or exceed the specifications or other Requirements of the Contract may be rejected. The Supplier shall provide the Authorized User ten (10) days after delivery of the Product, or such longer time period as may be mutually agreed upon by the Parties to an order, to test, evaluate and accept or reject the Product or Services

delivered or furnished under this Contract. The Authorized User, in its sole discretion, may accept the Product or return the Product with a 10% restocking fee if the Product is sent back to the Supplier in the original packaging with no dents, scratches, or missing parts.

Acceptance shall be effective for the purpose of making payment is when a BGAN SIM card is activated and airtime used. In the event that nonconformance therewith is discovered by the Authorized User after Acceptance and within the Warranty Period, whether due to a latent defect or otherwise, the Supplier shall take whatever action is necessary to conform the Product or Services to the Contract specifications and other Requirements, including but not limited to modification or replacement of the same. The Supplier's failure to do so shall constitute default of Contract for which VITA or the Authorized User may exercise the remedies provided in this Contract, including the Term and Termination section herein, in addition to and not in lieu of any other remedies available at law or in equity.

**F. Cure Period**

Supplier shall correct the non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Product or Service for re-testing within ten (10) days of written notice of non-conformance from an Authorized User, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails to deliver Product or Service which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Product or Service in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Product or Service with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Product or Service while reserving its right to revoke Acceptance if timely correction is not forthcoming.

If the Supplier's Product or Service fails to meet the Contract specifications or other Requirements, including the specifications of the brand name, if any (see Pricing Exhibit), or those required by the Supplier's or Product manufacturer's technical documentation, then the same may be rejected and returned to the Supplier. Such rejection will terminate the order for such Product or Services, or the relevant portion thereof, and exempt the Authorized User from all costs incurred by the Supplier related to such Product or Services. Notwithstanding the foregoing, VITA or the Authorized User shall be entitled to pursue any other remedies that are available to it under this Contract and at law or in equity.

**G. Product Discontinuation**

During the term of this Contract, if any Product listed on the Pricing Exhibit is discontinued and Supplier does not offer a substitute acceptable to VITA, Supplier shall, for each Authorized User who purchased the discontinued Product, continue to meet such Authorized User's needs for the discontinued Product for not less than six (6) months. Additionally, Supplier shall make available to the Authorized User maintenance parts for discontinued Product for three (3) years from the date of such discontinuation. In every event, Supplier shall use best efforts to provide any Authorized User with one hundred twenty (120) days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

**2. PRODUCT SUPPORT AND ADDITIONAL SERVICES**

**A. Engineering Changes and Product Modification**

Supplier-sponsored modifications and/or engineering changes shall be made with the consent of the Authorized User at no additional charge for a period of one (1) year from the date of installation. The Authorized User reserves the right at all times to schedule these Supplier-sponsored modifications and/or changes to minimize the impact on its daily operations.



**B. Training**

Supplier shall provide an instructional/maintenance manual with each unit, including accessories provided.

**3. WARRANTY AND MAINTENANCE SERVICES**

**A. Product Covered**

The Pricing Exhibit lists all Product types covered under warranty and maintenance. No Authorized User is obligated to continue warranty or maintenance on Product that has been removed from service, provided Supplier has been notified in writing of such removal.

Supplier shall maintain an inventory record ("Inventory Record") of all units of Product covered under warranty or maintenance by type, quantity and location. Inventory Record shall also include the end date for each unit's Warranty Period or, if applicable, the period for which the unit of Product is covered under maintenance. Product quantities and types may vary as Product is added or deleted from coverage. Supplier shall be notified in writing of any Product removed from service, and Supplier shall automatically amend the Inventory Record without further action by Authorized User to reflect the relocation, addition or deletion of Product. Supplier shall provide a copy of the most current Inventory Record to any Authorized User upon request of such Authorized User.

**B. Dispatch Procedures and Product Service Record**

Authorized User's designated control organization shall have the exclusive authority to request warranty or maintenance services. Supplier shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order.

Upon request by the Authorized User, Supplier shall, at completion of any service call performed by Supplier pursuant to this Warranty and Maintenance Services section, provide a Product Service Record detailing the services performed. Product Service Record shall record the following, as applicable:

- i). Installation/Relocation/Removal/Modifications
- ii). Remedial actions
- iii). Preventive actions

**C. Description of Warranty and Maintenance Services**

At any time during the Warranty Period, Contractor shall provide, at no additional charge, the Product manufacturer's standard warranty services to any Authorized User who has purchased Product pursuant to this Contract in order to maintain the Product in accordance with the manufacturer's specifications or replace the Product, if required. A description of such standard warranty services is incorporated herein as Exhibit D.

At any time during the Maintenance Period, Contractor shall provide, at the prices identified in the Pricing Schedule, the Product manufacturer's standard maintenance services to any Authorized User who has purchased Product pursuant to this Contract in order to maintain the Product in accordance with the manufacturer's specifications. A description of such standard maintenance services is incorporated herein as Exhibit D.

Notwithstanding the foregoing, Contractor shall, at a minimum, provide the following limited warranty services during the Warranty Period:

Contractor warrants that the Product will perform in accordance with the Product specifications throughout the Warranty Period. In the event that any Authorized User identifies, within the Warranty Period, any design defect or non-conformance to the Requirements, Contractor, at Contractor's sole expense, shall provide all parts, components and services required to correct the design defect and restore such item or shall replace it, so that it functions as warranted. In the event Product must be shipped from Authorized User's site for mechanical repair or replacement purposes, Contractor shall bear all costs associated with return of Product to the Contractor's repair facility. When repair of Product is completed, Contractor shall bear all costs associated with

returning such Product to the Authorized User's original point of shipment. Cost of shipping includes but is not limited to, costs of packing, transportation, rigging, drayage and insurance for damage or loss. For all repairs pursuant to this Contract, Contractor shall use new or certifiable as new parts. Any Product or any component part thereof that has been replaced by Contractor shall become the property of the Contractor, and any replacement Product or component part thereof shall become the property of the Authorized User.

Contractor shall repair the non-conforming unit of Product or provide an interim replacement product, within seventy-two (72) hours of notification by the Authorized User that a malfunction exists. Any interim product(s) shall be provided at no additional cost to such Authorized User, until the original unit of Product is returned, in Operating Condition. If Contractor is unable to make the defective Product conform within twenty (20) days following notification by such Authorized User, Contractor shall, at the Authorized User's request, accept return of such Product(s), and return all monies paid for the failed units.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE COST OF ALL WARRANTIES AND MAINTENANCE SERVICES / SUPPORT PLANS SHALL INCLUDE SERVICES AND SUPPORT FOR ALL SYSTEM SOFTWARE. ALL WARRANTIES AND MAINTENANCE SERVICES ARE CONSIDERED PERFORMANCE-BASED AND THEREFORE THE CONTRACTOR IS RESPONSIBLE FOR ANY REPORTED FAILURE OF THE PRODUCT DURING ANY WARRANTY PERIOD OR THE TERM OF ANY MAINTENANCE SERVICES / SUPPORT PLAN ORDERED BY ANY AUTHORIZED USER PURSUANT TO THIS CONTRACT.

**D. Product Maintenance Services and Renewal Options**

Upon expiration of the Warranty Period set forth herein, or at such earlier or later time as may be requested by the Authorized User, the Supplier, at the sole discretion of the relevant Authorized User, shall provide additional one (1) year periods of maintenance services, including labor, parts and travel, at the prices identified in the Pricing Exhibit and shall keep the Product and System Software in good Operating Condition.

Maintenance services shall not include electrical work external to the Supplier's Product or repair of damage resulting from accident, transportation by the Commonwealth between Commonwealth sites, negligence on the part of Commonwealth personnel, or causes other than ordinary use in the production environment in which the Product is installed. Notwithstanding the foregoing, an Authorized User may purchase maintenance services at any time. The Maintenance Period shall commence upon Authorized User's purchase of maintenance services from Supplier.

Supplier shall notify Authorized User sixty (60) days prior to expiration of the Warranty Period or Maintenance Period for each Product. Should the Authorized User, at its sole discretion, choose to continue maintenance for a unit of Product, such Authorized User shall issue an order to the Supplier for each twelve (12) month period that maintenance services are required after the initial Warranty Period and or subsequent Maintenance Period, in accordance with the Supplier's pricing, as set forth in the Pricing Exhibit.

Supplier warrants that it shall make Product Maintenance Services available for all the Product, including System Software, listed in the Pricing Exhibit, or which are components of Products listed in the Pricing Exhibit, for a period of not less than five (5) years from the date of the last purchase at the cost set forth on the Pricing Exhibit. Cancellation of Product Maintenance Services, including System Software Maintenance Services, by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

Supplier shall make best efforts to notify the Authorized User one (1) year prior to the effective date of any discontinuance of maintenance services. Should Supplier advise the Authorized User of its intent to discontinue certain maintenance services for any Product type ordered by the Authorized User, the Authorized User has the option to request and Supplier has the obligation to provide, all documentation required to ensure

ongoing support, including full maintenance and repair by the Authorized User or its designated third-party maintenance provider within thirty (30) days prior to the discontinuance date or replace the unsupported Product with a supported Product at no more than the cost delta between the supported Product and the unsupported Product.

**E. Certification of Product**

At the end of the Warranty Period or upon termination of this Contract or any order for Product Maintenance Services, the Supplier must ensure that the equipment covered under the contract is certified for maintenance by the Product Manufacturer. Supplier shall provide all appropriate documentation. All expenses for any recertification process shall be borne by the Supplier.

**THE OBLIGATIONS OF SUPPLIER UNDER THIS WARRANTY AND MAINTENANCE SERVICES SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.**

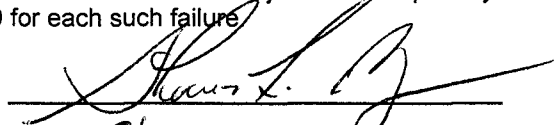
## EXHIBIT C – CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- i). No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- ii). If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii). The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and Contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature:



Printed Name:

SHAWN F. RYAN

Organization:

MACKAY COMMUNICATION

Date:

8/1/07

## EXHIBIT D – WARRANTY AND MAINTENANCE SERVICES DESCRIPTION

To be provided by Supplier

### WARRANTY:

FOR THRANE, NERA AND HUGHES TERMINALS AND ACCESSORIES (EXCEPT BATTERIES) THERE IS A 12 MONTH WARRANTY.

FOR THRANE, NERA AND HUGHES BATTERIES THERE IS A 6 MONTH WARRANTY.

\* SEE ATTACHED CONDITIONS FOR MORE INFORMATION.

### MAINTENANCE:

THERE ARE NO MANUFACTURER MAINTENANCE REQUIREMENTS FOR ANY OF THE BEAN TERMINALS.

COVERS THRANE & THRANE  
AND NERA BGAN'S

Extranet > Support > Warranty Conditions

## Warranty Conditions

### Limited factory warranty

Thrane & Thrane manufactures satellite and radio communication products which are marketed and supported world wide via the Thrane & Thrane distributor and partner network. Each and every Thrane & Thrane distributor and partner is committed to service and support the products in accordance with the market's needs and requirements. In addition the Thrane & Thrane service center networks are obliged to service the products in accordance with rules and policies defined by Thrane & Thrane irrespective of who sold and installed the product.

- The Thrane & Thrane On board Service Center (OSC) network are committed and obliged to service the maritime products on board the vessels.
- The Thrane & Thrane Certified Service Center (CSC) network are committed and obliged to service selected products (see [www.thrane.com](http://www.thrane.com) for a list of products) in their workshops.

All service centers carry an extensive stock of spares and employ factory trained and certified technicians/engineers, and they are authorized to carry out warranty repairs on behalf of Thrane & Thrane.

### 1. Thrane & Thrane Factory warranty

This warranty is granted to the Buyer who purchased the product from Thrane & Thrane.

A Thrane & Thrane Distributor or OEM partner/system integrator is obliged to make his own warranty arrangement vis-à-vis his customer, and shall as minimum grant a warranty that for a period of minimum 12 months from the date of sale to the customer covers defects covered by the Thrane & Thrane factory warranty.

Thrane & Thrane warrants this product and accessories to be free of defects in material and workmanship for a period of 24 months from the date of invoice of Thrane & Thrane's sale of the product to the Buyer, and that the product has been manufactured in accordance with the specifications, has been carefully manufactured and tested or inspected and has left Thrane & Thrane in good operating condition.

For certain products an Extended Warranty period can be purchased.

In the event of a defect, Thrane & Thrane will, at its discretion, repair or replace the product with no charge to the Buyer for parts and labour or reimburse the Buyer's purchase price. Replacement may involve the use of functionally equivalent reconditioned units.

The repaired or replaced product will be warranted for six (6) months from the date of repair, or for the balance of the original warranty period, whichever is longer.

### 2. Buyer's entire remedy

Buyer's exclusive remedy for non-conforming or defective products shall as set forth in this Limited Warranty be limited to – at Thrane & Thrane's discretion (1) the repair or replacement of any defective part of the product or accessories which are covered by this warranty or (2) reimbursement of Buyer's purchase price. All other remedies, liabilities or implied warranties shall explicitly be excluded.

### 3. Buyer's duties

To obtain warranty service, Buyer or the end-user must, before expiration of the warranty period:

- Return the product or accessories with a written warranty claim which shall include all relevant information including description of the nature of defect, and return address, to Thrane & Thrane or - for products in the Thrane & Thrane CSC program - to a Thrane & Thrane Certified Service Center (CSC). All freight and forwarding costs from Buyer/end-user to Thrane & Thrane/CSC must be paid by Buyer/end-user. Thrane & Thrane pays standard freight costs from Thrane & Thrane/CSC to Buyer/end-user after warranty repair;
- Or, for maritime products: request service on board the vessel from a Thrane & Thrane On board Service Center (OSC). The OSC service request must include a written warranty claim which shall include all relevant information including description of the nature of defect.

Thrane & Thrane, Thrane & Thrane CSCs and Thrane & Thrane OSCs will handle any warranty claim in accordance with these warranty terms. It is therefore recommended that end-user make the warranty claim to the seller/installer/distributor from whom he purchased the product, and who carries the final warranty obligation towards end-user.

Thrane & Thrane will not be responsible for losses or damages to the product incurred while the product is in transit or are being shipped for repair. Insurance is recommended.

#### 4. Limitations of implied warranties

Except as set forth in item 1 above, all other expressed or implied warranties, including those of fitness for any particular purpose and merchantability, are hereby disclaimed.

#### 5. Exclusions

This warranty does not cover the following:

- Installation;
- Normal wear and tear;
- Costs related to the original installation or subsequent dismantling and removal of the product and renewed installation;
- Shipment of the equipment or travel expenses to and from the Thrane & Thrane Service Centers;
- If the serial number label is missing or damaged;
- Any damage due to shipping;
- Defects directly or indirectly resulting from:
  - Servicing performed or attempted by third party;
  - Improper installation;
  - Use outside the specification limits;
  - Misuse, negligence, tampering, improper use or accidents;
  - Damages caused by lightning, overload or short circuit;
  - Liquids or trace of liquids or condensation inside the product.

#### 6. Exclusion of incidental or consequential damages

Absent gross negligence or wilful misconduct, Thrane & Thrane shall not be liable to Buyer or any other person for any incidental, special, indirect, or consequential damages whatsoever, including but not limited to lost profits, damages resulting from delay or loss of use, loss or damages arising out of the use or inability to use this product, or breach of this warranty even though caused by negligence or other fault. In no event will Thrane & Thrane be responsible for such damages, even if Thrane & Thrane has been advised of the possibility of such damages.

#### 7. Merger

This written warranty is the complete, final, and exclusive agreement between Thrane & Thrane and the Buyer with respect to the quality of performance of all the goods and any and all warranties and representations. This warranty sets forth all of Thrane & Thrane's responsibilities regarding this product. This warranty gives you specific legal rights and you may also have other rights, which may vary from country to country.

Thrane & Thrane assumes no liability for any criminal/civil penalties resulting from illegal use of the product.

For information about the Thrane & Thrane Service Center network and which products are included in the service center programs please see [www.thrane.com](http://www.thrane.com).

---

[Download the Warranty Conditions as PDF file](#)

Extranet &gt; Support &gt; Warranty Handling

## Warranty Handling

### Warranty Procedures

[Download PDF version](#)

#### 1. Introduction

##### 1.1 Scope

This document is intended for Thrane & Thrane, its Service Centers and Distribution Partners.

Chapter 5 of this document is only for Thrane & Thrane Airtime A/S and Airtime Partners.

##### 1.2 Purpose

The purpose of this document is to describe the warranty conditions and related procedures for Thrane & Thrane products (all brands), including the Airtime packages.

##### 1.3 Definitions and Acronyms

Thrane & Thrane	Thrane & Thrane A/S, Thrane & Thrane Norge AS, Thrane & Thrane Inc. and Thrane & Thrane Airtime A/S
Buyer	Thrane & Thrane Distributor, Partner, Service Center, OEM partner or other company buying Products directly from Thrane & Thrane
End-user	The customer to whom the Buyer has sold or provided the product to
Product	Thrane & Thrane (all brands) product or unit, including accessories and SIM cards/airtime
Unit	e.g.: antenna, electronic unit, handset etc.
SN	Thrane & Thrane Serial Number of Product
SC	Thrane & Thrane Service Center (including T&T CSC, T&T OSC and Nera RSC; - Nera RSC will be integrated in T&T CSC/OSC during 2007)
SC Program	Thrane & Thrane OSC, Thrane & Thrane CSC and Nera RSC programs, as described on <a href="http://www.thrane.com">www.thrane.com</a>
Last Time Buy	This is the date with respect to last time buy before a product becomes obsolete. Last Time Buy will be communicated in a Partner Briefing.

#### 2. The Warranty

The warranty is defined in the "Thrane & Thrane Limited Factory Warranty" document (T&T document # 99-124982, available on Extranet).

##### 2.1 What is covered by the Warranty

The warranty covers Products manufactured and/or supplied by Thrane & Thrane.

##### 2.2 What is not covered by the Warranty

The warranty does not cover:

- Software upload, i.e. a service call that is only to upload a newer revision software is not considered a warranty service;
- A warranty repair does not include any cosmetic updates;
- In case no problem is found the service, despite in the warranty period, is not considered a warranty service and is consequently charged the relevant service price;
- Please also note the exclusions mentioned in the Limited Factory Warranty document:

This warranty does not cover the following:

- Installation;
- Normal wear and tear;
- Costs related to the original installation or subsequent dismantling and removal of the product and renewed installation;
- Shipment of the equipment or travel expenses to and from the Thrane & Thrane Service Centers;
- If the serial number label is missing or damaged;
- Any damage due to shipping;
- Defects directly or indirectly resulting from:
  - Servicing performed or attempted by third party;

Covers Thrane & Thrane  
AND NERA BGAN'S



- Improper installation;
- Use outside the specification limits;
- Misuse, negligence, tampering, improper use or accidents;
- Damages caused by lightning, overload or short circuit;
- Liquids or trace of liquids or condensation inside the product.

### 2.3 Out of Box Failure

Out of Box Failure is regarded and dealt with as any other warranty defect.

### 2.4 Installation reports and warranty certificates

There is no need for installation reports or warranty certificates. The warranty is automatically initiated the day the Product is invoiced by Thrane & Thrane, and warranty status can be found in the "Warranty Checker" on the Thrane & Thrane Extranet.

### 2.5 Warranty period

The standard period is 24 months from date of invoice from Thrane & Thrane to Buyer.

If an Extended Warranty is sold, the period can be 30, 36, 48 or 60 months from date of invoice for the Product or from date of installation/commissioning.

The warranty period and start date can in either case be verified in the "Warranty Checker" on the Thrane & Thrane Extranet using the SN as identification of the Product.

#### 2.5.1 Spare parts warranty

Spare parts sold as new part from Thrane & Thrane is considered a Product, i.e. warranty period 24 months.

Spare parts used for replacement of defective parts have a warranty of 6 months from date of replacement, or for the remainder of the warranty period of the repaired Product, whichever is longer.

#### 2.5.2 Repair warranty

Thrane & Thrane grants, on all Thrane & Thrane and SC repairs, a 6 months repair warranty which covers the complete Unit that was repaired, including of other failures within the 6 months in that Unit.

#### 2.5.3 Batteries

Batteries are warranted against defects in material and workmanship for the same period as the Product. However, depending on the use, a chargeable battery can have a significantly shorter life-time than the warranty period, and since normal tear and wear is not covered by the warranty, a warranty claim on a chargeable battery may be rejected if the defect is deemed to be normal wear and tear due to the use of the battery.

### 2.6 Warranty coverage

The following warranty coverage applies for Thrane & Thrane Products:

Warranty repairs are done and returned free of charge via standard transportation method when the defective part or product is shipped - in the warranty period - to:

- Thrane & Thrane A/S, Porsvej 2, DK-9200 Aalborg SV, Denmark (the repair shall be registered in the web reporting tool available on Extranet),
- or – when relevant for the product – to the nearest Thrane & Thrane CSC

All freight and forwarding costs related to shipment to Thrane & Thrane/CSC must be paid by the sender.

For (fixed) maritime Products, requiring warranty service on board, Thrane & Thrane OSCs will do the warranty repair free of charge. OSC is allowed to charge travel and/or shipment costs, driving/waiting time and other costs to get to and from the vessel. OSC is not allowed to charge parts and labor for the Thrane & Thrane warranty repair, nor handling fee for parts.

## 3. The warranty procedures

### 3.1 Buyer's Responsibilities

The Buyer must inform his customer about the warranty conditions, meaning the warranty issued between Buyer and End-user, for the equipment at the time of sale of the Product.

### 3.2 Replacement of defective parts

Parts listed as repairable parts will be repaired or replaced free of charge when Thrane & Thrane receives the defective parts. Replacement for non repairable parts will be sent free of charge when Thrane & Thrane receives the defective part.

### 3.3 Shipping of repair and exchange parts to/from Thrane & Thrane

All shipment costs from Buyer to Thrane & Thrane is covered by Buyer.

All shipment costs from Thrane & Thrane to Buyer is covered by Thrane & Thrane.

Customs and/or handling fees in the respective Buyer countries must be covered by Buyer.

### 3.4 Service Center Rights and Responsibilities

Service Center means a certified service company listed on the Thrane & Thrane service center lists (On Board Service Centres, Certified Service Centres, Nera Distributor Finder)

#### 3.4.1 How to honor a warranty

Provided the SN according to the Warranty Checker is in the warranty period, SC is entitled to make the warranty repair of products covered by SC's Service Centre Agreement, and to make the required decisions in accordance with the Thrane & Thrane Limited Warranty on behalf of Thrane & Thrane.

#### 3.4.2 Shipment and travel expenses from/to customers

Products under warranty – and contained in the CSC or RSC program - shall be dispatched freight paid to the nearest Thrane & Thrane Certified Service Centre (CSC/RSC) dealing with the Product in mention.

Throughout 2007 following terms are valid:

CSC – see [www.thrane.com](http://www.thrane.com) for list of relevant products - will arrange return shipment on Thrane & Thrane's account according to the CSC agreement.

RSC – see [www.thrane.com](http://www.thrane.com) for list of relevant products - will arrange return shipment on freight collect basis.

*The new CSC program, which is under preparation, will replace the CSC/RSC by January 1, 2008. Details will be released in due time.*

For (fixed) maritime Products, requiring warranty service on board, Thrane & Thrane will cover labor according to the OSC/RSC agreement. Travel expenses and/or travel time, waiting time and other costs to get to and from the vessel will not be covered.

#### **3.4.3 Service report**

The SC has to fill in a service report for the product, with all information about the service, in the relevant Thrane & Thrane reporting tool. A copy of the report, or RMA form from the reporting tool, must be attached to defective parts when returned to Thrane & Thrane. For on board service a copy of a service report, signed (and stamped) by the engineer/technician and the captain, must be scanned and attached to the electronically filed report.

#### **3.4.4 Compensation for warranty repair done by SC**

The warranty repair will be honored according to the SC agreement and fees valid at the time of repair. Unless otherwise agreed to, payment will be made as a credit note to SC's account.

## **4. Support Procedures**

All questions related to support of the product regardless of type (Terminal or Airtime) between Thrane & Thrane and the Buyer must be performed via the Thrane & Thrane eSupport system.

For Thrane & Thrane Airtime customers the Airtime Front End is to be used.

#### **4.1 Buyer's Responsibilities**

The Buyer must inform his customer about the Support conditions issued between the Buyer and the End-user for the equipment at the time of sale of the Product.

#### **4.2 Buyer's Support Obligations**

The Buyer is to offer 1st line support towards its customers.

## **5. Thrane & Thrane Airtime A/S Support Obligations**

Thrane & Thrane Airtime A/S will offer a 24/7 web portal support area to all End-users having a Thrane & Thrane Airtime A/S product. The end user will be able to login to a Self Care Environment 24/7 in order to seek for a possible solution to the problem in question. Furthermore, a phone number to the Thrane & Thrane Airtime A/S Call Center is provided on this web page and finally the customer will be able to post a question for the 2nd line support if needed.

#### **5.1 Thrane & Thrane Airtime A/S Call Center Obligations**

Thrane & Thrane Airtime A/S Call Center offers a 24/7 service with respect to simple troubleshooting for air-time matters and support of use of Self Care Environment.

#### **5.2 Thrane & Thrane Airtime A/S 2nd Line Support**

Thrane & Thrane Airtime A/S 2nd line support will answer questions related to technical support of the Thrane & Thrane Airtime A/S Product within a 24 hour timeframe for week days and 72 hours for weekends. Public holidays excluded.

#### **5.3 Thrane & Thrane Airtime A/S Support Period**

Thrane & Thrane Airtime A/S Support (including self care environment, Call Center and 2nd line) will at all times be limited to offer support maximum three (3) years after Last Time Buy of the Thrane & Thrane Airtime A/S product.

#### **5.4 Training**

All Thrane & Thrane Airtime A/S partners must attend the Thrane & Thrane BGAN Basic training at the Thrane & Thrane training facilities. Furthermore, Airtime Partners must offer training towards the Airtime Resellers.

Thrane & Thrane will not offer training or support towards any Airtime Resellers.

[Download PDF version](#)

# CONTRACTUAL TERMS AND CONDITIONS

## TELECOMMUNICATIONS HARDWARE CONTRACT

### TABLE OF CONTENTS

1. PURPOSE AND SCOPE	3
2. DEFINITIONS	3
A. Acceptance	3
B. Agent	3
C. Authorized Users	3
D. Confidential Information	3
E. Maintenance Period	3
F. Operating Condition	3
G. Party	3
H. Principal Period of Maintenance (PPM)	3
I. Product	3
J. Receipt (of Product)	3
K. Requirements	4
L. Service	4
M. Software Manufacturer	4
N. Supplier	4
O. System Software	4
P. VITA	4
Q. Warranty Period	4
3. TERM AND TERMINATION	4
A. Contract Term	4
B. Termination for Convenience	4
C. Termination for Breach or Default	5
D. Transition of Services	5
4. PURCHASE, DELIVERY, INSTALLATION AND ACCEPTANCE	5
A. Orders	5
B. Purchase Price and Price Protection	6
C. Purchase Payment Terms	6
D. Invoice Procedure	7
E. Supplier's Report of Sales and Industrial Funding Adjustment	7
F. Small, Woman, and Minority-Owned Business (SWaM) Subcontracting Report	8
G. Universal Service Fund (USF)	8
5. GENERAL WARRANTY	8
A. Supplier	8
B. Ownership	8
C. Product	8
D. Supplier's Viability	9
E. Supplier's Past Experience	9
6. SCOPE OF USE	9
7. SOFTWARE LICENSE	9
A. License Grant	9
B. Limitations on Copying and Disclosure	10
C. Business Continuity and Recovery	10
D. Ownership	10
8. CONFIDENTIALITY	10
A. Treatment and Protection	10
B. Exclusions	11
C. Return or Destruction	11
9. LIABILITY AND INDEMNIFICATION	11
10. SECURITY COMPLIANCE	12

<b>11. BANKRUPTCY</b>	<b>12</b>
<b>12. GENERAL PROVISIONS</b>	<b>13</b>
A. Relationship Between VITA, Authorized Users, and Supplier	13
B. Licenses and Permits	13
C. Incorporated Contractual Provisions	13
D. Compliance with the Federal Lobbying Act	13
E. Governing Law	14
F. Dispute Resolution	14
G. Advertising and Use of Proprietary Marks	14
H. Notices	14
I. No Waiver	15
J. Assignment	15
K. Captions	15
L. Severability	15
M. Survival	15
N. Force Majeure	15
O. Remedies	15
P. Right to Audit	15
Q. Taxes—Federal, State, and Local	16
R. Contract Administration and Account Management	16
S. Entire Contract	16

## **CONTRACTUAL TERMS AND CONDITIONS TELECOMMUNICATIONS HARDWARE CONTRACT**

THIS HARDWARE AND MAINTENANCE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Supplier to be effective as of the date in set forth on the signature page of this Contract ("Effective Date").

### **1. PURPOSE AND SCOPE**

This Contract sets forth the terms and conditions under which Supplier agrees to sell Inmarsat Broadband Global Area Network (BGAN) terminals and related equipment, and to provide various related Services to the Authorized Users.

### **2. DEFINITIONS**

#### **A. Acceptance**

Acceptance shall take the form of completed acceptance testing in conformance with the Requirements as determined by Authorized User in the applicable order, or successful delivery to the designated ship to location (Receipt), as specified in the applicable order.

#### **B. Agent**

Any third party independent agent of any Authorized User.

#### **C. Authorized Users**

All Public Bodies, including VITA and all Commonwealth agencies, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

#### **D. Confidential Information**

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order issued hereunder, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

#### **E. Maintenance Period**

One (1) year after Authorized User's purchase or renewal of maintenance services.

#### **F. Operating Condition**

That condition which allows the Product to function in a normal, acceptable working manner, as designed by the Product manufacturer.

#### **G. Party**

Supplier, VITA, or any Authorized User.

#### **H. Principal Period of Maintenance (PPM)**

Days and times during which Supplier shall answer or respond to Authorized User's calls or emails for warranty or maintenance services.

#### **I. Product**

Hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation and related accessories, as set forth in the Pricing Exhibit, provided pursuant to this Contract.

#### **J. Receipt (of Product)**

An Authorized User or its Agent has physically received, by means of inside delivery, the Product at the correct "ship-to" location.

**K. Requirements**

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Product described in the applicable documentation, an Authorized User's order, Exhibit A hereto, and such other parameters, characteristics, or performance standards for the Product that may be agreed upon in writing by VITA and Supplier or the Parties to an order issued hereunder.

**L. Service**

Any Product-related service provided by Supplier under this Contract, including certain maintenance services for the Product.

**M. Software Manufacturer**

The owner of the System Software provided by Supplier under this Contract.

**N. Supplier**

Any individual who is an employee, sub-contractor, or independent contractor of Supplier who is assigned by Supplier to perform Services under this Contract.

**O. System Software**

The operating system code, including software, firmware and microcode, (object code version) for each Product, including any subsequent revisions, as well as any applicable documentation.

**P. VITA**

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

**Q. Warranty Period**

As defined by the Product manufacturer.

**3. TERM AND TERMINATION**

**A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of one (1) year. VITA, in its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial one (1) year period. VITA will issue a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Warranty or maintenance on any Product ordered during the term of the Contract may extend beyond the term of this Contract. Expiration of the term of this Contract or any order shall not affect any perpetual license granted to an Authorized User pursuant to this Contract, provided such Authorized User has paid all fees for such license.

**B. Termination for Convenience**

VITA may terminate for convenience this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate for convenience an order, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason. In addition, VITA may immediately terminate this Contract, in whole or in part, or any order issued hereunder, if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide written notice to VITA if federal debarment proceedings are instituted against Supplier. Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section of this Contract. Upon termination, the Commonwealth shall have no future liability except for Product accepted or Services rendered by Supplier prior to the termination date. Termination of this Contract or any order shall not affect any perpetual license granted to an Authorized User pursuant to this Contract, provided such Authorized User has paid all fees for such license.

**C. Termination for Breach or Default**

VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for breach and/or default of Supplier ("Termination for Breach" or "Termination for Default"). Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order issued hereunder.

If VITA or an Authorized User deems the Supplier to be in breach and/or default, VITA or the Authorized User shall issue a "Show Cause Notice" identifying the failure and providing Supplier fifteen (15) days to cure the failure/nonperformance. If Supplier fails to answer the Show Cause Notice, or does not correct the deficiencies noted, VITA may immediately terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or the Authorized User may immediately terminate its order, in whole or in part. Such termination shall be deemed a Termination for Breach or Termination for Default.

VITA may immediately terminate this Contract, in whole or in part, for breach and/or default if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, and VITA shall provide written notice to Supplier of such termination.

Upon Termination for Breach or Termination for Default, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Services rendered by Supplier and accepted by the Authorized User or Product delivered by Supplier and accepted by the Authorized User prior to the termination date. Supplier shall accept return of any Product that was not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Product. All costs of de-installation and return of Product shall be borne by Supplier.

The failure of VITA or an Authorized User to exercise its right to terminate for breach and/or default under this provision shall not be construed as a waiver of its right to terminate for breach and/or default, rescind or revoke this Contract or any order issued hereunder in the event of any subsequent breach and/or default on any provisions of such agreements.

Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section.

The terms of the Termination for Convenience and Termination for Breach or Default Sections shall not apply to termination for non-appropriation of funds.

**D. Transition of Services**

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition Services to any other supplier with whom VITA or such Authorized User contracts for provision of Product-related services. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at a reasonable hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

**4. PURCHASE, DELIVERY, INSTALLATION AND ACCEPTANCE**

**A. Orders**

Notwithstanding all Authorized User's rights to license or purchase Supplier's products or services under this Contract, an Authorized User is under no obligation to license or purchase from Supplier any of Supplier's products or services. This Contract is optional use and non-exclusive and all Authorized Users may, at their sole discretion, purchase,

license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the products and services provided by Supplier.

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's e-procurement system. Commonwealth agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Purchase Order (PO): An official PO form issued by an Authorized User.
- ii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing and canceling orders for the Products and Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

Notwithstanding the foregoing, Supplier shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS VITA IS THE AUTHORIZED USER.

**B. Purchase Price and Price Protection**

The Pricing Exhibit sets forth the fees and the applicable discounts. Neither VITA nor any Authorized User will pay any additional costs above those costs provided for in the Pricing Exhibit. Supplier may submit to VITA a request for an increase in such fees or a decrease in such discounts. Such request must be accompanied by written documentation to VITA demonstrating the additional value reflected by such increase in fee or decrease in discount. VITA may, in its sole discretion, agree to a modification of this Contract to effectuate such increase in fees or decrease in discounts.

Any price decrease effectuated during the Contract term, or any extension thereto, by reason of market change shall be passed on to VITA and all Authorized Users. This decrease will be effective on the date the price decrease is announced to the general public.

Authorized charges do not include operational supplies (e.g. paper, tape) unless such supplies are specifically identified in the Pricing Exhibit. All supplies used by the Authorized User shall conform to the Supplier's published specifications provided to such Authorized User at time of Product installation. The Authorized User reserves the right to acquire such supplies from any vendor of its choice.

**C. Purchase Payment Terms**

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon



review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net 30 days after Acceptance of Product or net 30 days after receipt of a valid invoice for Services invoiced in advance.

**D. Invoice Procedure**

Supplier shall remit each invoice to the "bill to" address provided with the order promptly after all Products or Services have been accepted. Payment for Product Maintenance Services shall be annually in advance unless otherwise stated herein. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with the Pricing Exhibit. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in the Pricing Exhibit or as noted in the executed order. Invoices issued by the Supplier shall identify at a minimum:

- i). Product or Service type and description
- ii). Product serial number, if any
- iii). Quantity, charge and extended pricing for each Product and/or Service item
- iv). This Contract number and the applicable order number
- v). Supplier's Federal Employer Identification Number (FEIN).

Any credits due any Authorized User under the terms of this Contract may be applied against Supplier's invoices with appropriate information attached.

The Parties agree that any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any Authorized User.

**E. Supplier's Report of Sales and Industrial Funding Adjustment**

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and the VITA Controller (contact information provided below), and shall report all invoices submitted by Supplier pursuant to the Contract to all Authorized Users during the preceding month. The report shall also show a cumulative record of all invoices submitted to all Authorized Users pursuant to the Contract.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days of submitting the "Supplier Monthly Report of Sales". The IFA payment shall be submitted in the form of a check or electronic funds disbursement made payable to the Treasurer of Virginia. The IFA payment is equal to two percent (2%) of total sales under this Contract during the relevant month, as determined by the amount invoiced to Authorized Users. The IFA payment shall reference this Contract number, "report amounts", and "report period".

Supplier shall remit IFA payments made via check to VITA, Attention VITA Controller. Supplier shall also provide a copy of the IFA payment to the VITA IFA Coordinator via email or fax. Failure to comply with reporting and payment requirements of this section may result in default of Contract.

**Contact Information**

VITA Controller 110 South 7 <sup>th</sup> Street, 3 <sup>rd</sup> Floor Richmond, VA 23219-3931	VITA IFA Coordinator 110 South 7 <sup>th</sup> Street, 1 <sup>st</sup> Floor Richmond, VA 23219
---	---

VITAController@vita.virginia.gov	804-371-5980 (Phone) 804-371-5969 (Fax) ifacoordinator@vita.virginia.gov
----------------------------------	--

**F. Small, Woman, and Minority-Owned Business (SWaM) Subcontracting Report**

Supplier and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small, Woman, and Minority Owned Businesses (SWaMs) as subcontractors and second-tier suppliers under this Contract. Supplier and VITA will review Supplier's SWaM subcontracting plan, which was submitted with Supplier's proposal, and SWaM subcontract reporting, and will discuss ways of encouraging SWaM participation and increasing subcontracting spend with SWaM suppliers.

Supplier and VITA agree to meet annually thereafter to review SWaM subcontracting reports and discuss further action with respect to SWaM subcontracting and spend.

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small, Woman, and Minority Owned Business (SWaM) Subcontracting Monthly Report (template available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>).

Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to SWaM vendors, by SWaM category, regardless of such SWaM vendors' certification status. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

**G. Universal Service Fund (USF)**

Supplier agrees to make available all Products and Services as listed and priced herein to any Authorized User which is a USF participant. Supplier agrees to provide the Products and Services directly to the USF participant, and to bill each USF participant directly. Supplier agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of this Contract for USF participation shall be the sole responsibility of the Supplier.

Supplier warrants that it is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive USF allocations/disbursements for products and services provided pursuant to this Contract to Authorized Users which are eligible for those allocations/disbursements on behalf, and for the benefit, of those Authorized Users. Supplier also agrees to maintain those qualifications and to assist Authorized Users in applying for and receiving these allocations/disbursements.

**5. GENERAL WARRANTY**

With respect to the Services provided by Supplier, Supplier represents and warrants the following:

**A. Supplier**

Supplier shall perform its warranty and maintenance obligations hereunder in accordance with the highest professional duty of care.

**B. Ownership**

Supplier is the owner of the Product or otherwise has, to the best of its knowledge, the right to grant to any Authorized User title to or the right to use the Product provided hereunder. Upon Supplier's receipt of payment, the ordering Authorized User shall obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests and encumbrances.

**C. Product**

Supplier warrants the following with respect to the Product:

- i). Upon delivery, the Product shall be new and in Operating Condition and shall have all released engineering changes released to date already installed;
- ii). Each Product delivered hereunder shall function in conformance with the Product specifications;
- iii). No engineering change made to the Product or System Software revision shall degrade the performance of the Product to a level below that defined in the published specifications;
- iv). Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and
- v). The System Software shall not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the System Software, nor shall Supplier disable any Authorized User's use of such System Software through remote access or otherwise.

**D. Supplier's Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Supplier that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

**E. Supplier's Past Experience**

Supplier warrants that Product has been provided and Services have been successfully performed for a non-related third-party without significant problems due to the Product, Services, or Supplier.

**THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.**

**6. SCOPE OF USE**

Any Authorized User may use the Product, and any System Software licensed in connection with such Product, on a worldwide basis for the benefit of itself and its agents, subject to export laws and regulations. Supplier further authorizes use of the Product by third parties who are under contract with an Authorized User to provide outsourcing services, including but not limited to providing application development services, data processing or facilities management services for the benefit of such Authorized User. For Products to which an Authorized User takes title under the terms of this Contract, there are no restrictions on such Authorized User's subsequent resale or distribution thereof. In the event that such Product contains System Software to which Authorized User does not take title, the Authorized User may resell or distribute such System Software to the extent that such resale or distribution is incidental to the resale or distribution of the hardware component(s) of the Product.

**7. SOFTWARE LICENSE**

**A. License Grant**

Supplier hereby grants to each Authorized User a fully paid, perpetual, worldwide, nonexclusive, irrevocable license to use System Software for each Product. The Authorized User shall be permitted to transfer the license if such transfer is incidental to the transfer or sale of the Product for which the System Software was acquired. All licenses granted under this Contract shall commence upon the acceptance of the Product by the Authorized User. Notwithstanding the foregoing, VITA or the Authorized User may terminate a license at anytime. In no event shall Supplier's remedies for any breach of this Contract include the right to terminate any license or support services hereunder.

Each license granted under this Contract authorizes the Authorized User to use the System Software programs in machine readable form on the unit of Product for which it

was acquired. The System Software is the property of Supplier or its licensor, and no title or ownership of the System Software or any of its parts, including documentation, is transferred to the Authorized User.

Notwithstanding anything to the contrary in this Contract, the Commonwealth shall have:

- i). Unlimited use of the System Software on the unit of Product for which it is acquired and on any replacement Product;
- ii). Use of such System Software with a backup system (a) if the system(s) for which it was acquired is for any reason, inoperative, (b) during an emergency, or (c) during the performance of engineering changes in features or model;
- iii). The right to use such System Software at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth; and
- iv). The right to copy such System Software for safekeeping, backup, or archival purposes.

The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Contract, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Contract.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

**B. Limitations on Copying and Disclosure**

An Authorized User may make a reasonable number of backup copies of the System Software. Such Authorized User agrees that any copies of the software or documentation which it makes pursuant to this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier and, except as expressly authorized, the Authorized User shall not distribute same to any third-party without Supplier's prior written consent. Authorized User may not resell the System Software except if such resale is incidental to the resale of Product to which the Authorized User has taken title.

**C. Business Continuity and Recovery**

In the event that all of an Authorized User's copies of the System Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other natural disaster not occasioned by the fault of such Authorized User, Supplier shall provide to the Authorized User, at no additional cost, a replacement copy of the System Software and documentation; provided however, that nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the System Software.

**D. Ownership**

For any System Software provided as an integral component of the Product, Supplier represents and warrants that it is the sole owner of the System Software product or, if not the owner, has received all proper authorizations from the owner to license the System Software product, and has the full right and power to grant the rights contained in this Contract.

**8. CONFIDENTIALITY**

**A. Treatment and Protection**

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, VITA or any Authorized User, may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of VITA or such Authorized User that are bound by non-disclosure contracts with VITA or such Authorized User. Each Party

shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

**B. Exclusions**

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

**C. Return or Destruction**

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

**9. LIABILITY AND INDEMNIFICATION**

Supplier agrees to indemnify, defend and hold harmless VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) breach of any representation, warranty or covenant of Supplier contained herein, (iii) any defect in the Product or Services, or (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Product or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that the Products or Services provided under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected Authorized User(s) in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Product or Services, or in the event any Product or Service, in the Supplier's opinion, is likely to become the subject of a claim of

infringement, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Product or Services, or any component thereof; or (b) replace or modify such infringing Product or Services, or any component thereof, with non-infringing Products or Services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Product or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Product. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Product or Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

**EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

#### **10. SECURITY COMPLIANCE**

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/docs/psg.cfm>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations.

For any individual Commonwealth location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Commonwealth information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

Supplier shall indemnify, defend, and hold VITA, the Commonwealth, and any Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from VITA, the Commonwealth, any Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

#### **11. BANKRUPTCY**

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future

performance of this Contract or the applicable order. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect the rights of VITA or any Authorized User right to pursue or enforce any of its rights under this Contract or otherwise.

## **12. GENERAL PROVISIONS**

### **A. Relationship Between VITA, Authorized Users, and Supplier**

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind or to commit VITA or any Authorized User to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or an Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

### **B. Licenses and Permits**

Supplier shall be responsible for obtaining all rights-of-way, licenses, and/or permits required by applicable authorities in order to perform installation Services at the location(s) specified on any order issued pursuant to this Contract.

### **C. Incorporated Contractual Provisions**

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference:

<http://www.vita.virginia.gov/procurement/documents/StatutorilyMandatedTsandCs.pdf>

The contractual claims provision at §2.2-4363 of the Code of Virginia is also incorporated by reference.

The terms and conditions in the document posted to the aforereferenced URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URL periodically.

### **D. Compliance with the Federal Lobbying Act**

Supplier shall not, in connection with this Contract, engage in any activity prohibited by 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Contract, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

Supplier is hereby advised that a significant percentage of the funds used to pay Supplier's invoices under this Contract may be federal funds. Under no circumstances shall any provision of this Contract be construed as requiring or requesting the Supplier

to influence or attempt to influence any person identified in 31 USC 1352(a)(1) in any matter.

Supplier's signed certification of compliance with the foregoing is incorporated as Exhibit C hereto.

**E. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

**F. Dispute Resolution**

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the decision of the relevant public body on the claim, unless that public body fails to render its decision within thirty (30) days. The decision of the relevant public body shall be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to such public body's alternative dispute resolution (ADR) procedures, if any. Supplier may invoke such public body's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by a public body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

**G. Advertising and Use of Proprietary Marks**

Supplier shall not use the name of VITA or any Authorized User or refer to VITA or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of VITA or such Authorized User. In no event may Supplier use a proprietary mark of VITA or an Authorized User without receiving the prior written consent of VITA or the Authorized User.

**H. Notices**

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the US mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.



**I. No Waiver**

Any failure to enforce any terms of this Contract, including termination for breach, shall not constitute a waiver.

**J. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

**K. Captions**

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

**L. Severability**

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. VITA and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

**M. Survival**

The provisions of this Contract regarding Warranty, Confidentiality, and Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**N. Force Majeure**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination.

**O. Remedies**

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA reserves any and all other remedies that may be available at law or in equity.

**P. Right to Audit**

VITA reserves the right to audit those Supplier records that relate to the Services rendered or the amounts due Supplier for such Services under this Contract. VITA's right to audit shall be limited as follows:

- i). Three (3) years from Service performance date;
- ii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

The Supplier shall not have the right to audit, or require to have audited, VITA or any Authorized User.

**Q. Taxes—Federal, State, and Local**

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes. Such taxes shall not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K. The Commonwealth is also exempt from paying E-911 charges.

**R. Contract Administration and Account Management**

Supplier agrees that at all times during the term of this Contract an account executive ("Account Manager"), at Supplier's senior management level, shall be assigned and available to VITA and all Authorized Users. Supplier reserves the right to change such account executive upon reasonable advance written notice to VITA.

The Account Manager's responsibilities should include (i) resolution of technical support questions and issues which have not been resolved by Supplier's technical support division; (ii) preparation of account information and response to and resolution of inquiries regarding billing and payment; and (iii) investigation and resolution of customer service issues and complaints.

**S. Entire Contract**

The following documents, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- iv). Exhibit A Pricing
- v). Exhibit B Product and Service Requirements
- vi). Exhibit C Certification Regarding Lobbying
- vii). Exhibit D Warranty and Maintenance Services Description

This Contract, all its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier, and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, referenced by or provided with the Supplier's bid shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual do not apply to this Contract. This Contract may only be amended by an instrument in writing signed by VITA and Supplier.

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, Exhibit B, then any specific order. VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

This Contract is effective as of the date set forth below.

Supplier

Name: SHAWN F. RYAN  
: - MACKAY COMMUNICATIONS  
Title: ACCOUNT MANAGER  
-  
Date: 8/1/07

VITA

Name: [Signature]  
: DIRECTOR Finance + Admin.  
Title: DIRECTOR Finance + Admin.  
-  
Date: 8/2/07

**CONTRACTUAL TERMS AND CONDITIONS  
TELECOMMUNICATIONS SERVICES CONTRACT  
TABLE OF CONTENTS**

<b>1. PURPOSE AND SCOPE</b>	<b>3</b>
<b>2. DEFINITIONS</b>	<b>3</b>
A. Acceptance	3
B. Confidential Information	3
C. Party	3
D. Service	3
E. Supplier	3
F. VITA	3
G. Warranty Period	3
<b>3. TERM AND TERMINATION</b>	<b>3</b>
A. Contract Term	3
B. Termination for Convenience	4
C. Termination for Breach or Default	4
D. Transition of Services	4
<b>4. SERVICES</b>	<b>5</b>
A. Nature of Services and Engagement	5
B. Subcontractors	5
C. Substitution of Services	5
<b>5. SUPPLIER PERSONNEL</b>	<b>5</b>
A. Selection and Management of Supplier Personnel	5
B. Supplier Personnel Supervision	5
<b>6. GENERAL WARRANTY</b>	<b>5</b>
A. Ownership	6
B. Performance	6
C. Services Warranty and Remedy	6
D. Supplier's Viability	6
E. Supplier's Past Experience	6
<b>7. ORDERS AND COMPENSATION</b>	<b>6</b>
A. Orders	6
B. Purchase Price and Price Protection	7
C. Invoice and Payment Terms	7
C. Invoice Procedures	8
D. Small, Woman, and Minority-Owned Business (SWaM) Subcontracting Report	8
E. Universal Service Fund	8
<b>8. CONFIDENTIALITY</b>	<b>9</b>
A. Treatment and Protection	9
B. Exclusions	9
C. Return or Destruction	9
<b>9. LIABILITY AND INDEMNIFICATION</b>	<b>9</b>
<b>10. SECURITY COMPLIANCE</b>	<b>10</b>
<b>11. BANKRUPTCY</b>	<b>10</b>
<b>12. GENERAL PROVISIONS</b>	<b>11</b>
A. Relationship Between VITA, Commonwealth Public Bodies, and Supplier	11
B. Licenses and Permits	11
C. Incorporated Contractual Provisions	11
D. Compliance with the Federal Lobbying Act	11
E. Governing Law	12
F. Dispute Resolution	12
G. Advertising and Use of Proprietary Marks	12
H. Notices	12

I. No Waiver	12
J. Assignment	12
K. Captions	13
L. Severability	13
M. Survival	13
N. Force Majeure	13
O. Remedies	13
P. Right to Audit	13
Q. Taxes—Federal, State, and Local	13
R. Contract Administration and Account Management	13
S. Entire Contract	14

## **CONTRACTUAL TERMS AND CONDITIONS TELECOMMUNICATIONS SERVICES CONTRACT**

THIS TELECOMMUNICATIONS SERVICES CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Supplier to be effective as of the date in set forth on the signature page of this Contract ("Effective Date").

### **1. PURPOSE AND SCOPE**

This Contract sets forth the terms and conditions under which Supplier shall provide Broadband Global Area Network (BGAN) Air Time service to any public body as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

### **2. DEFINITIONS**

#### **A. Acceptance**

Acceptance shall take the form of successful performance of the Services at the designated location, or completed Acceptance testing in conformance with the requirements as determined by VITA or the Authorized User in the applicable order.

#### **B. Confidential Information**

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order issued hereunder, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

#### **C. Party**

Supplier, VITA, or a Commonwealth public body, including an Authorized User, which is a recipient of Supplier's Services.

#### **D. Service**

Any work performed or service provided by Supplier under this Contract for the benefit of VITA, an Authorized User, or another public body on whose behalf VITA has placed an order with Supplier.

#### **E. Supplier**

Any individual who is an employee, sub-contractor, or independent contractor of Supplier who is assigned by Supplier to perform Services under this Contract.

#### **F. VITA**

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

#### **G. Warranty Period**

All Services purchased under this Contract remain under warranty for the time period commencing after acceptance by VITA or the Authorized User and continuing through expiration of the Contract or discontinuance of the Services at the discretion of VITA or the Authorized User.

### **3. TERM AND TERMINATION**

#### **A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of one (1) year. VITA, at its sole option, may extend the term of this Contract for up to three (3) additional one (1) year periods after the expiration of the initial contract term. VITA will issue a

written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term.

**B. Termination for Convenience**

VITA may terminate for convenience this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate for convenience any order, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason. VITA may also immediately terminate this Contract, in whole or in part, or any order issued hereunder, if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if federal debarment proceedings are instituted against Supplier. Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section of this Contract.

Upon termination for convenience, any Authorized User, once a BGAN SIM is activated shall be responsible for the monthly service fees for the term of the plan selected and airtime used.

**C. Termination for Breach or Default**

VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for breach and/or default of Supplier ("Termination for Breach" or "Termination for Default"). Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order issued hereunder.

If VITA or an Authorized User deems the Supplier to be in breach and/or default, VITA or the Authorized User shall issue a "Show Cause Notice" identifying the failure and providing Supplier fifteen (15) days to cure the failure/nonperformance. If Supplier fails to answer the Show Cause Notice, or does not correct the deficiencies noted, VITA may immediately terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or the Authorized User may immediately terminate its order, in whole or in part. Such termination shall be deemed a Termination for Breach or Termination for Default.

VITA may immediately terminate this Contract, in whole or in part, for breach and/or default if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, and VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352.

Upon Termination for Breach or Termination for Default, neither the Commonwealth, nor VITA, nor any public body, to include any Authorized User, shall have any future liability except for Services accepted prior to the termination date. Supplier shall refund any monies paid by VITA or any Authorized User for Services that were not accepted by VITA or the Authorized User.

The failure of VITA or an Authorized User to exercise its right to terminate for breach and/or default under this provision shall not be construed as a waiver of its right to terminate for breach and/or default, rescind or revoke this Contract or any order issued hereunder in the event of any subsequent breach and/or default on any provisions of such agreements.

Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section.

The terms of the Termination for Convenience and Termination for Breach or Default Sections shall not apply to termination for non-appropriation of funds.

**D. Transition of Services**

Prior to or upon expiration or termination of this Contract, Supplier shall provide all assistance reasonably required to transition Services to any other supplier with whom VITA contracts for provision of services identical or similar to the Services provided by Supplier pursuant to this Contract. This obligation may extend beyond expiration or termination of the Contract. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier

shall provide such assistance at a reasonable hourly rate or a charge agreed upon by Supplier and VITA or the Authorized User.

#### **4. SERVICES**

##### **A. Nature of Services and Engagement**

Supplier is an independent contractor engaged to perform certain Services, including but not limited to installation and/or support activities for public bodies as described in Exhibit A and the Pricing Exhibit. VITA and all Authorized Users reserve the right to order any of Supplier's Services at any time during the term of this Contract or any extension thereto. Notwithstanding all VITA's or Authorized User's rights to obtain Supplier's Services under this Contract, neither VITA nor any public body is under any obligation to purchase any of Supplier's Services. This Contract is non-exclusive and VITA and all public bodies may, at their sole discretion and in accordance with applicable law and regulation, purchase, license or otherwise receive benefits from third party suppliers of services similar to, or in competition with, the services provided by Supplier.

##### **B. Subcontractors**

If Supplier subcontracts the provision of Services under this Contract to any other party, Supplier (i) shall act as prime contractor and shall be the sole point of contact with regard to all obligations under this Contract, and (ii) hereby represents and warrants that any authorized subcontractors performing the Services shall perform the Services in accordance with the warranties set forth in this Contract. Supplier shall not subcontract any Services pursuant to this Contract to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs.

##### **C. Substitution of Services**

During the term of this Contract, the Supplier is not authorized to substitute for any Service identified in the Pricing Exhibit a service not identified in the Pricing Exhibit. Violation of this condition may be considered grounds for termination of the Contract. Supplier is not authorized to substitute for any Service identified in the Pricing Exhibit any other Service identified in the Pricing Exhibit without the written permission of VITA or the Authorized User. Violation of this condition may be considered grounds for termination of the Contract.

#### **5. SUPPLIER PERSONNEL**

##### **A. Selection and Management of Supplier Personnel**

Supplier shall be solely responsible for the conduct of its employees, agents, and subcontractors, including all acts and omissions of such employees, agents, and subcontractors, and shall ensure that such employees, agents, and subcontractors comply with the appropriate public body's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws and regulations, including those related to imports and exports. The public body on whose site Supplier is performing Services shall have the right to require the immediate removal from its premises of any employee, subcontractor or agent of Supplier whom such public body believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

##### **B. Supplier Personnel Supervision**

Supplier acknowledges that Supplier, or any of its agents, contractors, or subcontractors, is and shall be the employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of and terminate the employment of Supplier personnel.

#### **6. GENERAL WARRANTY**

With respect to the Services provided by Supplier, Supplier represents and warrants the following:

**A. Ownership**

Supplier has the right to provide the Services and, to the best of its knowledge, the provision of such Services does not violate or infringe any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

**B. Performance**

- i). All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in Supplier's profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all Services furnished under this Contract;
- ii). The Services are pursuant to a particular solicitation, and therefore such Services and Deliverables shall be fit for the stated purposes specified by VITA and Supplier is possessed of superior knowledge with respect to the Services and is aware that VITA, Authorized Users, and public bodies on whose behalf VITA acquires Supplier's Services are relying on Supplier's skill and judgment in providing the Services;
- iii). The Services shall meet or exceed the stated requirements;
- iv). Any documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a properly trained user to fully utilize the Services without reference to any other materials or information.

**C. Services Warranty and Remedy**

Throughout the Contract term, including any extensions thereto, Supplier shall respond to reports of interruption of Service and acknowledge all requests for restoration of Service with a status report within one (1) hour after notification by VITA or an Authorized User that a Service failure has occurred. Supplier shall include in its status report a description of the failure and the estimated time to repair/restore Services.

Supplier's response may be on-site or from a remote location based on the Supplier's determination of the source of Service failure. If an on-site response is required, then the Supplier's repair personnel shall be on-site and working to restore Service within four (4) hours after notification of Service failure.

**D. Supplier's Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Supplier that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

**E. Supplier's Past Experience**

Supplier warrants that the Services have been successfully performed for a non-related third-party without significant problems due to the Services or Supplier.

THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

**7. ORDERS AND COMPENSATION****A. Orders**

Notwithstanding all Authorized User's rights to license or purchase Supplier's services under this Contract, an Authorized User is under no obligation to license or purchase from Supplier any of Supplier's services. This Contract is optional use and non-exclusive and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of services similar to, or in competition with, the services provided by Supplier.



Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's e-procurement system. Commonwealth agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- v). Purchase Order (PO): An official PO form issued by an Authorized User.
- vi). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing and canceling orders for the Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

Notwithstanding the foregoing, Supplier shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

**ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS VITA IS THE AUTHORIZED USER.**

#### **B. Purchase Price and Price Protection**

The Pricing Exhibit sets forth the fees and the applicable discounts. No public body will be required to pay any additional costs above those costs provided for in the Pricing Exhibit. Supplier may submit to VITA a request for an increase in such fees or a decrease in such discounts. Such request must be accompanied by written documentation to VITA demonstrating the additional value reflected by such increase in fee or decrease in discount. VITA may, in its sole discretion, agree to a modification of this Contract to effectuate such increase in fees or decrease in discounts.

Any price decrease effectuated during the Contract term, or any extension thereto, by reason of market change shall be passed on to VITA and all Authorized Users. This decrease shall be effective on the date the price decrease is announced to the general public.

At all times during the term of this Contract and any extensions thereto, Supplier's prices on the Pricing Exhibit shall at all times comply with §§ 56-234 et seq. of the Code of Virginia. Supplier's failure to comply with the aforementioned statute shall be grounds for termination of the Contract or any order issued hereunder for default and/or breach; and VITA and any Authorized User may pursue any remedies available at law or in equity with regard to such failure to comply.

#### **C. Invoice and Payment Terms**

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, or a Authorized User may terminate an order, in whole or in part, for those services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

Supplier shall deliver to VITA one consolidated monthly invoice for all services ordered by and billable to VITA pursuant to this Contract. Supplier shall also deliver to each Authorized User one consolidated monthly invoice for all services ordered by and billable to such Authorized User pursuant to this Contract. Neither VITA nor any Authorized User is obligated to pay against an invoice that is not readable and verifiable.

Supplier is responsible for the accuracy of its billing information. Charges for Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid.

If there are any disputed items, VITA or the appropriate Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if Supplier does not concur with VITA or such Authorized User, shall provide VITA or such Authorized User with documentation to support the charge within fifteen (15) days of notification of the disputed amount. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, VITA or such Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed.

#### **C. Invoice Procedures**

Supplier shall promptly remit each invoice to the "bill-to" address provided with the order. Supplier shall submit invoices for monthly recurring charges monthly in advance and for usage-based or other miscellaneous charges in arrears. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with the Pricing Exhibit. In addition, all Services provided under this Contract shall be billed by the Supplier at the Contract price, regardless of which public body is benefiting from the Services. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in the Pricing Exhibit, or as noted in the executed order. Invoices issued by the Supplier shall identify at a minimum:

- i). Service type and description, with charges identified at the lowest level of detail (i.e., phone level)
- ii). Applicable order date
- iii). This Contract number and the applicable order number
- iv). Supplier's Federal Employer Identification Number (FEIN).

No invoice will be paid without adequate billing details. If available, charges should be provided on electronic media at the detail level.

Any credits due VITA or any Authorized User under the terms of this Contract may be applied against Supplier's invoices to VITA or such Authorized User on the same account with appropriate information attached.

The Parties agree that any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any other public body.

#### **D. Small, Woman, and Minority-Owned Business (SWaM) Subcontracting Report**

By the 10th day of every month, Supplier shall submit to VITA the Small, Woman, and Minority Owned Business (SWaM) Subcontracting Monthly Report (template available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>). Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to SWaM vendors, by SWaM category, regardless of such SWaM vendors' certification status. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

#### **E. Universal Service Fund**

Supplier agrees to make available all Services as listed and priced herein to any Authorized User which is a Universal Service Fund (USF) participant. Supplier agrees to provide the Services directly to the USF participant, and to bill each USF participant directly. Supplier agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of this Contract for USF participation shall be the sole responsibility of Supplier.

## **8. CONFIDENTIALITY**

### **A. Treatment and Protection**

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, VITA or any public body recipient of Supplier's Services, including Authorized Users, may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of VITA or such public body that are bound by non-disclosure contracts with VITA or such public body. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

### **B. Exclusions**

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

### **C. Return or Destruction**

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

## **9. LIABILITY AND INDEMNIFICATION**

Supplier agrees to indemnify, defend and hold harmless VITA, the Commonwealth, Authorized Users, or any other public body recipient of Services, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) any act or omission of any employee or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Services provided by Supplier, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services.

Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the public body against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that the provision of Services under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected public body(ies) in writing, via certified mail and via email, if available, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected public body(ies) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected public body(ies) may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services,, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all public bodies the right to continue use of such infringing Services, or any component thereof; or (b) replace or modify such infringing Services, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall reimburse VITA or any affected public body for the reasonable costs incurred by VITA or such public body in obtaining an alternative service in the event such public body cannot use the affected Services

**EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

#### **10. SECURITY COMPLIANCE**

Supplier agrees to comply with all provisions of the then current security procedures of VITA and/or the relevant public body recipient of Supplier's Services as are pertinent to Supplier's operation and have been supplied to Supplier by VITA or such public body and further agrees to comply with all applicable federal, state and local laws. For any individual Commonwealth location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Commonwealth information with which such employees and agents come into contact while at the end user public body site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

Supplier shall indemnify, defend, and hold VITA, the Commonwealth, any Authorized User, and any other public body recipient of Supplier's Services, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from VITA, the Commonwealth, any Authorized User, and any other public body recipient of Supplier's Services, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

#### **11. BANKRUPTCY**

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract or any order

issued hereunder, or a Authorized User may terminate an order, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by the VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

## **12. GENERAL PROVISIONS**

### **A. Relationship Between VITA, Commonwealth Public Bodies, and Supplier**

Supplier has no authority to contract for VITA or any Commonwealth public body or in any way to bind, to commit VITA or any Commonwealth public body to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Commonwealth public body. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Commonwealth public body, and neither VITA nor any Commonwealth public body shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Commonwealth public body is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or any Commonwealth public body, shall be reimbursed by Supplier upon demand by VITA or such Commonwealth public body.

### **B. Licenses and Permits**

Supplier shall be responsible for obtaining all rights-of-way, licenses, and/or permits required by applicable authorities in order to perform installation Services at the location(s) specified on any order issued pursuant to this Contract.

### **C. Incorporated Contractual Provisions**

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference:

<http://www.vita.virginia.gov/procurement/documents/StatutorilyMandatedTsandCs.pdf>

The contractual claims provision at §2.2-4363 of the Code of Virginia is also incorporated by reference.

The terms and conditions in the document posted to the aforereferenced URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URL periodically.

### **D. Compliance with the Federal Lobbying Act**

Supplier shall not, in connection with this Contract, engage in any activity prohibited by 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Contract, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

Supplier is hereby advised that a significant percentage of the funds used to pay Supplier's invoices under this Contract may be federal funds. Under no circumstances shall any provision of this Contract be construed as requiring or requesting the Supplier to influence or attempt to influence any person identified in 31 USC 1352(a)(1) in any matter.

Supplier's signed certification of compliance with the foregoing is incorporated as Exhibit C hereto.

#### **E. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

#### **F. Dispute Resolution**

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the decision of the relevant public body on the claim, unless that public body fails to render its decision within thirty (30) days. The decision of the relevant public body shall be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to such public body's alternative dispute resolution (ADR) procedures, if any. Supplier may invoke such public body's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by a public body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

#### **G. Advertising and Use of Proprietary Marks**

Supplier shall not use the name of VITA or any Commonwealth public body or refer to VITA or any Commonwealth public body, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of VITA or such Commonwealth public body. In no event may Supplier use a proprietary mark of VITA or any Commonwealth public body without receiving the prior written consent of VITA or such Commonwealth public body.

#### **H. Notices**

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the US mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

#### **I. No Waiver**

Any failure to enforce any terms of this Contract, including termination for breach, shall not constitute a waiver.

#### **J. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent

shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

**K. Captions**

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

**L. Severability**

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. VITA and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

**M. Survival**

The provisions of this Contract regarding Warranty, Confidentiality, and Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**N. Force Majeure**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination, and in addition an Authorized User may terminate any order affected by such postponement or delay.

**O. Remedies**

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA and all Commonwealth public bodies reserve any and all other remedies that may be available at law or in equity.

**P. Right to Audit**

VITA reserves the right to audit those Supplier records that relate to the Services rendered or the amounts due Supplier for such Services under this Contract. VITA's right to audit shall be limited as follows:

- i). Three (3) years from Service performance date;
- ii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

The Supplier shall not have the right to audit, or require to have audited, VITA or any Commonwealth public body.

**Q. Taxes—Federal, State, and Local**

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes. Such taxes shall not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K. The Commonwealth is also exempt from paying E-911 charges.

**R. Contract Administration and Account Management**

Supplier agrees that at all times during the term of this Contract an account executive ("Account Manager"), at Supplier's senior management level, shall be assigned and available to VITA and

all Authorized Users. Supplier reserves the right to change such account executive upon reasonable advance written notice to VITA.

The Account Manager's responsibilities should include (i) resolution of technical support questions and issues which have not been resolved by Supplier's technical support division; (ii) preparation of account information and response to and resolution of inquiries regarding billing and payment; and (iii) investigation and resolution of customer service issues and complaints.

**S. Entire Contract**

The following documents, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- i). Exhibit A Pricing Exhibit
- ii). Exhibit B Service Requirements
- iii). Exhibit C Certification Regarding Lobbying

This Contract, all its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier, and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, referenced by or provided with the Supplier's bid shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual do not apply to this Contract. This Contract may only be amended by an instrument in writing signed by VITA and Supplier.

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, Pricing Exhibit, then any specific order. VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

This Contract is effective as of the date set forth below.

Supplier

VITA

Name:

SHAWN F. RYAN

Name:

Title:

ACCOUNT MANAGER

Title:

Date:

8/1/07

Date:

8/2/07